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Supreme Court, U.S.
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No. 00-1144

In The

Supreme Court of the United States

CHERYL K. MCPHAUL,

Petitioner,

v.

MADISON COUNTY BOARD OF HEALTH, BOARD OF COMMISSIONERS OF MADISON COUNTY, and ARLEEN HORINE, in her official and individual capacity,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

NELSON A. NETTLES
Counsel of Record
NORRIS, CHOPLIN & SCHROEDER, LLP
101 West Ohio Street, Ninth Floor
Indianapolis, IN 46204-4213
(317) 269-9330

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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PARTIES TO THE PROCEEDING

Petitioner, Cheryl McPhaul, is an individual and not a corporate entity.

Respondents, Madison County Board of Health, Board of Commissioners of Madison County, and Arleen Horine, in her official capacity, are governmental entities. Respondent, Arleen Horine, in her individual capacity, is an individual and not a corporate entity.

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OPINIONS BELOW

Petitioner provides the correct citation for the Seventh Circuit Court of Appeals ("Seventh Circuit") opinion. However, the district court opinion reported at 976 F.Supp. 1190 (S.D. Ind. 1997) is not the opinion included in Appendix B to the petition. The cited opinion is an earlier ruling in this case on a motion to dismiss, and that ruling has not been appealed to either the Seventh Circuit or this Court. The district court opinion in Appendix B is the one at issue in these appeals.

JURISDICTION

Respondents have no material dispute with petitioner's jurisdictional statement.

STATEMENT OF THE CASE

Petitioner, Cheryl McPhaul ("McPhaul") takes liberties in stating the evidence as presented to the district court. McPhaul presents disputed facts irrelevant to the issues decided by the Seventh Circuit, and omits materially undisputed facts which are relevant to the issues decided. For example, McPhaul selectively cites to her own deposition transcript in Appendix C, yet many of the citations are to conclusions, not facts, and do not support the proposition for which they are cited. The pertinent undisputed material facts are set forth in the Seventh Circuit Court of Appeals ("Seventh Circuit") opinion (Appendix A) and the District Court opinion (Appendix

B). All references in this brief to the Appendix are to the appendices accompanying the petition of McPhaul. The procedural history set forth by McPhaul is generally accurate.

REASONS FOR DENYING THE PETITION

A. PETITIONER CITES NO AUTHORITY IN CONFLICT WITH THE SEVENTH CIRCUIT'S DECISION IN THIS CASE

This Court may deny the petition for a writ of certiorari because the Seventh Circuit's opinion has not been shown by McPhaul to conflict with any decision of this Court, of another Circuit, or of any other court. Nor has McPhaul shown the decision to conflict with the U.S. Constitution or any federal statute or regulation.

1. No Conflict with Decisions of this Court or other Circuits

McPhaul makes no argument that the Seventh Circuit did not follow the proper law from this Court. The six (6) Supreme Court cases cited by McPhaul are cited for uncontroversial legal propositions. The six (6) Seventh Circuit opinions cited and the opinion in this case are not argued to be contrary to the proper interpretation of the Americans with Disabilities Act (ADA) or the Fourteenth Amendment Equal Protection Clause. Plaintiff only argues that her facts meet the required elements. For all the reasons set forth by the district court and the Seventh Circuit, they do not.

Not a single court opinion is offered as being contrary to the decision in this case. This Court has a "usual preference for cases that present actual conflicts". *Lambert v. City and County of San Francisco*, 529 U.S. 1045, 1552 (2000) (Scalia, joined by Kennedy and Thomas, dissenting from denial of certiorari); Sup. Ct. R. 10. The Seventh Circuit's opinion in this case is unremarkable in that no new law is established, and no new analysis is provided for future cases. In short, McPhaul simply wants one more court to review the facts for her two claims in hopes that a Phoenix will rise from the ashes. That is not the function of the Supreme Court. See Sup. Ct. R. 10.

2. No Conflict with Federal Statutes or Constitution

Similar to the case law cites, McPhaul offers the standard citations to the ADA statutes and regulations. McPhaul does not argue the Seventh Circuit erred in applying the ADA or the regulations under the ADA. What McPhaul does in her petition is set forth the elements of the claim, cite evidence which she believes sufficient (usually only her own self-serving and conclusory deposition statements), and then states a conclusion that the element was met. In each instance, the element was not met, as the district court and Seventh Circuit ruled.

The same is true with regard to the Fourteenth Amendment Equal Protection Clause claim. Additionally, the entire second question by McPhaul addresses an argument on the disparate treatment that was not at issue before the Seventh Circuit. The Seventh Circuit dismissed

her disparate treatment claim under the Equal Protection Clause because she failed to present a prima facie case. (Appendix A pp. 9a-13a) Yet McPhaul's second question presented focuses on whether she could establish pretext. Pet. for Writ of Cert. p. (i). The Seventh Circuit's decision had nothing to do with the issue of pretext, because it did not have to reach that issue to decide the case.

The third question presented focuses on McPhaul's hostile work environment claim. This claim was addressed on appeal only against Arleen Horine. (Appendix p. 13a) Yet McPhaul agreed that it was a co-worker, not Horine that made the three comments that McPhaul considered harassment. (Appendix pp. 13a, 15a) None of the three comments were about McPhaul (Pet. for Writ of Cert. p. 2), and while she found them offensive, the comments did not interfere with her work performance. (Appendix p. 16a) There was no evidence that Horine deliberately or recklessly allowed the co-workers' comments and no evidence that Horine failed to act because of racial animus. (Appendix p. 17a) Again, no new law was formed or applied here. This case just involves a petitioner's belief she had sufficient evidence when she really did not.

B. THE SEVENTH CIRCUIT'S DECISION IS FACT-BOUND AND WILL LACK SIGNIFICANT IMPACT ON OTHER CASES

Any decision involving McPhaul's case will necessarily be fact-bound. "We do not grant certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). But McPhaul presents

no basis for believing this is anything more than a typical case of applying undisputed facts to established law. Importantly, McPhaul's petition fails to identify a single opinion from any state or federal court which is factually indistinguishable from this case. No case is presented as deciding these facts directly contrary to the way the Seventh Circuit did. Either the facts are not typical, or the issue is not as important as McPhaul argues. The decision did not hinge on adopting one legal theory over another. Rather, the Seventh Circuit simply applied uncontroversial propositions of law to the facts of the case.

A brief review of McPhaul's petition will confirm that her arguments are very fact-sensitive. McPhaul had the duty to present facts to the district court which would establish her claims. Fed.R.Civ. P. 56. Both the district court and the Seventh Circuit found the facts she submitted were insufficient. All McPhaul does now is claim both courts were wrong in how those facts match up to the law. Such fact-bound arguments are not suited for Supreme Court review. *See NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170, 176 n. 8 (1981). The decisions below gave full consideration to the facts presented and decided the issues raised correctly.

C. PETITIONER DOES NOT IDENTIFY ANY SPECIFIC ERRORS OF LAW OR SUBSTANTIAL DEPARTURES FROM THE ACCEPTED COURSE OF APPELLATE REVIEW TO MERIT REVIEW BY THIS COURT

This is an easy case. Petitioner's Table of Authorities cites six (6) United States Supreme Court decisions, and

six (6) Seventh Circuit decisions. No departures from prior Supreme Court precedent are presented. Nor are any conflicting Seventh Circuit decisions argued, and of course McPhaul does not even attempt to argue cases from other circuits or districts. Therefore, any legal error would be unique to this case and based entirely on the factual circumstances present here. If a case does not have far-reaching impact beyond the parties, it is not well-suited for review by the Supreme Court. *See Layne & Bowler Corp. v. Western Well Works,* 261 U.S. 387, 393 (1923). McPhaul has not shown in her petition how this case will have impact on federal law outside of its application to this case.

D. ALTERNATIVE GROUNDS EXIST FOR AFFIRMING THE SEVENTH CIRCUIT'S DECISION ON THE ADA CLAIM

Even if the Seventh Circuit erred in any of its rulings, alternative grounds exist upon which the decision can be affirmed. On the ADA claim, the Seventh Circuit did not reach the issue of whether McPhaul failed to establish that she was disabled. If the Seventh Circuit had reached this issue, McPhaul offers no reasonable basis for believing the Seventh Circuit would have reached a conclusion different than the district court did on this issue. The district court's conclusions are located at Appendix B pages 25a to 31a. The Seventh Circuit also did not reach the alternative arguments addressed by the district court that McPhaul produced insufficient evidence that she was unable to perform major life activities or that she is substantially limited from working a class of jobs. The

district court's conclusions on these points are also correct. (Appendix B pp. 31a-35a) Thus, this is not a good case for granting certiorari on the ADA question as several grounds exist for the Seventh Circuit's decision to affirm the District Court.

CONCLUSION

For the foregoing reasons, Cheryl McPhaul's petition for writ of certiorari should be denied.

Respectfully submitted,

NORRIS, CHOPLIN & SCHROEDER LLP

*NELSON NETTLES (16820-53)
*Counsel of Record
Attorneys for Respondents
Madison County Board of Health, Board of Commissioners of Madison County, and Arlene Horine, in her official and individual capacity

NORRIS, CHOPLIN & SCHROEDER LLP
101 West Ohio Street
Ninth Floor
Indianapolis, IN 46204-4213
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